

Orna Alyagon Darr, *Marks of an Absolute Witch: Evidentiary Dilemmas in Early Modern England*, Farnham, Surrey: Ashgate, 2011. Pp. 334. \$124.95. ISBN (978-0-754-66987-6).
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This book studies the discourse on evidence in English witchcraft cases in the sixteenth, seventeenth, and early eighteenth centuries. In England, witchcraft was a secular crime, defined by statutes in 1542, 1563, and 1604 and not decriminalized until 1736. The secrecy of this alleged crime, the dearth of evidence regarding its commission, and its professed supernatural dimension made it especially difficult to prove. Because English courts did not, like many jurisdictions on the continent, have a clearly defined standard for proving capital crimes, and because England did not have firmly established rules of evidence until the middle of eighteenth century, evidentiary standards in witchcraft cases remained uncertain throughout this period. Basing her study on a wide variety of contemporary publications that include trial narratives, legal manuals, and treatises by physicians, Orna Alyagon Darr argues that the standards of evidence reflected or proposed in this literature were not entirely concerned with the determination of the truth or objective reality, but were influenced by the social and professional interests of their authors. In Darr's view, therefore, the rules of common law were social constructions. Darr also argues that the standards of evidence discussed in witchcraft cases had a bearing on the formulation of the four main rules of evidence (hearsay, character, corroboration, and confession) as they took shape in the eighteenth century.

The book is organized around different types of evidence used in witchcraft cases. The most significant of these was circumstantial evidence, which in England was usually the only type of evidence produced in witchcraft trials. Darr argues that the discussion of circumstantial evidence in these cases influenced the later formulation of evidence law. Equally relevant to later evidentiary standards are chapters on the competence of children, accomplices, and expert witnesses; the criteria for establishing credible testimony; and the juridical value of voluntary confessions. Of less importance, as they had only popular currency, were discussions regarding the location of marks on the body of the witch, scratching the witch to produce blood, and the swimming test to see if the witch floated and was therefore guilty. As these types of supernatural evidence had no validity at law and did not influence the later formation of the rules of evidence, one questions the prominence given to them in this study. Darr's discussion of the marks of the witch, which provides the title of the book, is also misleading, as she confuses what were known in England as the witches' marks, the teats found on witches that they allegedly used to suckle their imps or familiar spirits, with the Devil's marks, which were brandings that the Devil allegedly imprinted on witches as a sign of allegiance to him at the time of the conclusion of the pact.

One reason for the absence of the Devil's marks in England was that the charge that witches made pacts with the Devil was very rare and became prominent only during Matthew Hopkins's large witch hunt in 1645–1647. Clerical writers such as William Perkins considered the pact the essence of the witch's crime, but his demonological theories had little relevance to the actual charges brought against English witches. Perkins apparently did not understand that the essence of the crime in England was the performance of harmful magic. His discussion of presumptions and proofs in terms of Roman-canonical procedure also suggests that he had little or no knowledge of English criminal procedure either.

Most of the authors who wrestled with the evidentiary dilemmas that form the subject of Darr's book had no legal training. This is understandable, as in England laymen were involved in every stage of the judicial process: the pre-trial proceedings conducted by justices of the peace, the deliberations of grand jurors, and the determination of guilt or innocence by trial jurors. Unfortunately, the pamphlet literature does not tell us very much about the role played by the professionally trained assize judges, whose control of courtroom procedure and interactions with juries played a crucial role in the eventual establishment of the rules of evidence. The law of evidence in England is essentially a law of jury control, and if its formation was to some extent socially constructed, as Darr argues, the decisions made by judges in allowing certain types of testimony and in instructing juries were central to its formation. The only significant sources for the role of assize judges in witchcraft trials, however, are trial narratives, especially those that recorded conflicts between judges and juries. One such conflict occurred in 1712, when Sir John Powell, a skeptical assize judge, was unable to prevent the jury from convicting the accused witch Jane Wenham, whom he subsequently reprieved. Powell's decision to allow an unprecedented confrontation between Wenham and one of her alleged victims in court "for the satisfaction of the jury" (191) shows that in the early eighteenth century, when the rules of evidence were only beginning to take shape, judges still had problems controlling juries who were determined to convict on the basis of insufficient evidence.

Brian P. Levack

University of Texas at Austin